

Recording Domestic Violence Convictions
For Federal Firearms Disqualified/Restricted
Person Determinations

Fall Prosecutor Conference 2013

Current manner of recording and reporting domestic violence convictions is insufficient for BCI to determine whether to approve or deny a firearms purchase.

Significant number who should be disqualified/restricted persons because of a domestic violence conviction in Utah are able to buy a gun by close of business today.

Reporting convictions to BCI

Plea disposition in court

Written on minute entry by court clerk

Data entered into CORIS

Feeds into UCJIS

BCI gets its information from UCJIS to determine whether to grant an application to purchase a firearm

Court recording / reporting DV convictions

Utah Code § 77-36-1(4) lists sixteen (16) offenses plus a catch-all that can be DV if committed by one cohabitant against another.

Not all of those offenses, if convicted, make somebody a “restricted person” under federal firearms law.

Convictions must involve “**use or attempted use of physical force**” against a cohabitant. See 18 U.S.C. § 921(a)(33)(A).

Between *federal* definition of “intimate partner”.

United States v. Hays, 526 F.3d 674 (10th Cir. 2008).

18 U.S.C. § 921(a)(33)(A)

““[M]isdemeanor crime of domestic violence” means an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and...

(ii) “has, as an element, the **use or attempted use of physical force** ... committed by” by a person in any one of the following statuses against another...

18 U.S.C. § 921(a)(33)(A)

“...a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”

Utah BCI - to make “approval” or “denial” decision

Currently researching past dockets, J&Cs, police reports, charging documents, contacting prosecutors and court clerks

Default position is to grant

Less than 10% denial rate

How to fix this

Record conviction on docket as to the specific subsection

Assault as illustration...

76-5-102(1) Assault

(1) Assault is:

(a) an attempt, with unlawful force or violence, to do bodily injury to another;

(b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or

(c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

Authority

United States v. Hays, 526 F.3d 674 (10th Cir. 2008).

After *Hays* was decided, the Federal Bureau of Investigation Legal Research and Analysis Team (FBI LRAT) determined that **a conviction to section 76-5-102(1)(b) does not render an offender a disqualified/restricted person.**

Letter in materials (for defense counsel).

LRAT determinations for Utah statutes were finalized on July 14, 2009, and circulated thereafter.

Not sufficient for BCI to make “physical force”
against intimate partner determination

76-5-102 (not sufficient)

or,

76-5-102(1) (not sufficient)

Needs to be

76-5-102(1)(a)

or,

76-5-102(1)(c)

Not sufficient for BCI to make “physical force”
against intimate partner determination

“THIS CASE INVOLVES DOMESTIC VIOLENCE”

Docket out to the subsection – where the facts support

76-5-102(1)(a)

or,

76-5-102(1)(c)

Reported that way for BCI.

Articulate that at EOP – let the record reflect....

Is that do-able?

Distinction in assault cases would solve 95% of BCI's problem.

Example

“Defendant is adjudicated guilty of violating Utah Code section 76-5-102(1)(c) because he/she used force against his/her victim when committing this offense; to wit: _____, and the relationship between the parties is: at the time of the offense [choose one from below].”

“...a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”

FBI LRAT example

“John Smith is adjudicated guilty of assault 1953 § 76-5-102[(1)](a) because he attempted to strike Jane Smith on the mouth with the intent of causing her bodily injury.”

**REPORT OF MISDEMEANOR CRIMES
OF DOMESTIC VIOLENCE
FEDERAL FIREARMS DISQUALIFICATION**

JD-CR-155 Rev. 9-10
C.G.S. § 29-36f, 18 U.S.C. § 922(g)(9), Pub. L. 110-180

State of Connecticut
Superior Court
www.jud.ct.gov



The information below is being collected and reported to state and federal firearms regulatory authorities in support of Connecticut General Statutes § 29-36f, 18 U.S.C. § 922(g)(9), and Pub. L. 110-180, if applicable.

Offender's last name	Offender's first name	Offender's middle name	Court location	Docket number
----------------------	-----------------------	------------------------	----------------	---------------

By a judgment of the court, the offender was convicted of the misdemeanor crime(s) below, in a proceeding in which the offender was represented by counsel, or knowingly and intelligently waived the right to counsel, through a jury trial, or if the offender knowingly and intelligently waived the right to a jury trial, through a non-jury trial, or a plea of guilty or nolo contendere.

A.	Conviction date
<input type="checkbox"/> § 53a-61 Assault in the third degree.	
<input type="checkbox"/> § 53a-61a Assault of an elderly, blind, disabled, pregnant or mentally retarded person in the third degree.	
<input type="checkbox"/> § 53a-64cc Strangulation in the third degree.	

B1. Specify the subsection where applicable and whether the court found that an element of the offense includes the use or attempted use of physical force, or threatened use of a deadly weapon.	Conviction date
<input type="checkbox"/> § 53-37b Deprivation of a person's equal rights or privileges by force or threat.	(Note: this offense is a felony if bodily injury or death results)
<input type="checkbox"/> § 53a-73a Sexual assault in the fourth degree.	Specify subsection: (Note: this offense is a felony if the victim is under sixteen years of age)
<input type="checkbox"/> § 53a-96 Unlawful restraint in the second degree.	
<input type="checkbox"/> § 53a-183b Interfering with an emergency call.	
<input type="checkbox"/> § 53a-181 Breach of the peace in the second degree.	Specify subsection: <input type="checkbox"/> (a)(1) <input type="checkbox"/> (a)(2)
<input type="checkbox"/> § 53a-182 Disorderly Conduct	<input type="checkbox"/> (a)(1)

B2.
<input type="checkbox"/> Yes <input type="checkbox"/> No An element of the offense includes the use or attempted use of physical force, or threatened use of a deadly weapon.

C. Offender's current or former relationship to the victim:

- | | |
|---|--|
| <input type="checkbox"/> Spouse of the victim. | <input type="checkbox"/> Parent, stepparent, or guardian of the victim. |
| <input type="checkbox"/> Child in common with the victim. | <input type="checkbox"/> Cohabitation with the victim as a parent or guardian, or a person similarly situated to a parent or guardian. |
| <input type="checkbox"/> Cohabitation with the victim as a spouse or a person similarly situated to a spouse, or intimate cohabitation with the victim. | |
| <input type="checkbox"/> Other (specify): _____ | |

By the Court	Name of Judge	Date
Name of Clerk	Signature of Clerk	

Instructions to Clerk:

Keep this form with the documents from the file that are sent to the Records Center, and fax this form to the Superior Court Operations Division at (860) 610-0480.

Judgment and conviction documents

J&Cs

Same specificity as docket

CORIS

Is now set up for “as to the specific subsection” as an amendment click/pull down menu.

So a charge of § 76-5-102(1) can be entered at entry of plea to a specific subsection.

When entering disposition out to the subsection, click “find violation” screen,

Then “assault*” or “76-5-102*” and click,

76-5-102(1)(a) or

76-5-102(1)(b) or

76-5-102(1)(c).

Jury trials - special verdict forms

Special verdict forms in jury trials.

So exact subsection may be argued for and convicted to,

And so intimate partner status can be part of the jury's verdict.

Bench trials

After closing argument, assuming a specific subsection is argued for...

Return verdict to specific subsection if evidence supports that,

And intimate partner status.

The key is what is entered into CORIS.

That is what BCI gets (CORIS into UCJIS).

If only specific subsection is recorded on docket...

The “intimate partner” determination will be made by BCI by reading the police incident report for the case.

Other charges requiring recording
as to the specific subsection

Only the **specific subsection** listed for the following offenses **plus the disqualifying clause in the subsection indicated, plus intimate partner status** render the offender a disqualified/restricted person.

Disorderly conduct § 76-9-102(1)(b)(i).

Note, **only the clause in subsection (1)(b)(i) that reads “engages in fighting” behavior is disqualifying**, so if you are convicting to subsection (1)(b)(i), after asking the court to record that specific subsection, also ask for a notation on the docket: **“...and defendant engaged in fighting behavior when defendant committed this offense; to wit: _____ and the relationship between the parties is: at the time of the offense [choose one].”**

Child abuse § 76-5-109(2)(a), (b), (c), (3)(a), (b), or (c).

Note, in child abuse cases, a conviction to any of the six subsections above is **only disqualifying if the offender is the parent of the victim and that same parent inflicted the serious physical injury on the victim.** So, after asking the court to record that specific subsection, also ask for a notation on the docket:
“...and defendant is the parent of the victim and is the person who inflicted the serious physical injury on the victim; to wit:
_____.”

Damage / interruption of communication device

§ 76-6-108(2)(a).

Note, **only the clause in subsection (2)(a) that reads “uses force” is disqualifying**, so if you are convicting to subsection (2)(a), after asking the court to record that specific subsection, also as for a notation on the docket: **“...and the defendant used force against another person while committing this offense; to wit: _____ and the relationship between the parties is: at the time of the offense [choose one].”**

Threatening / using dangerous
weapon in fight / quarrel § 76-10-506(2)

Note, **only the clause in subsection (2) that reads “or unlawfully uses a dangerous weapon in a fight or quarrel” is disqualifying**, so if you are convicting to subsection (2), after asking the court to record that specific subsection, also ask for a notation on the docket: **“...and defendant used a dangerous weapon in a fight or quarrel; to wit: _____ and the relationship between the parties is: at the time of the offense [choose one].”**

Unlawful detention § 76-5-304(1).

Note, the clause in subsection (1) that reads “detains or restrains the victim” is what is disqualifying, so after asking the court to record that specific subsection, also ask for a notation on the docket: “and in committing the offense defendant used force to detain [or restrain] the victim; to wit: _____ and the relationship between the parties is: at the time of the offense [choose one].”

Pleas in abeyance / right to counsel

PIAs do not render the offender a disqualified/restricted person (unless later entered as conviction).

See Utah Code §§ 77-2a-1(1), 77-36-1.1(3); 18 U.S.C. § 921(a)(33)(B)(ii).

Convictions to qualifying offenses do not render the offender a disqualified/restricted person unless defendant represented by counsel or knowingly and intelligently waived.

See 18 U.S.C. § 921(a)(33)(B)(i).

Incomplete solution

Advisory pursuant to Rule 11(g), Utah Rules of Criminal Procedure, will need to be addressed.

Some jurisdictions do not have a prosecutor at entry of plea (EOP).

Note re disorderly conduct...

Language in Utah Code § 77-36-1(4)(o) referring to 18 U.S.C. § 921 should be viewed with skepticism.

Utah Code § 76-10-503 effective May 8, 2012

It is an affirmative defense to transferring a firearm **under state statute restricted person law** that the person had custody and control of the firearm before he or she became restricted under state statute.

Provides ten days to transfer firearm out of now-restricted person's custody, unless the court orders a different amount of time.

Human element behind all this

18 U.S.C. § 921 cases / source materials

United States v. Hays, 526 F.3d 674 (10th Cir. 2008).

Johnson v. United States, 130 S.Ct. 1265 (2010).

The End

eberkovich@utah.gov

801 350 1303

ltyler@utah.gov

801 964 4517